

212784



December 16, 2004

Via UPS Next Day Air

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

DEC 17 2004

Part of
Public Record

Re: Finance Docket No. 34417 (Sub-No. 2) ; Union Pacific Railroad Company –
Temporary Trackage Rights Exemption (Modification) -- The Burlington Northern
and Santa Fe Railway Company

Dear Mr. Williams:

I am enclosing the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
2. A payment form in the amount of \$1,000.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

FEE RECEIVED
DEC 17 2004
SURFACE
TRANSPORTATION BOARD

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

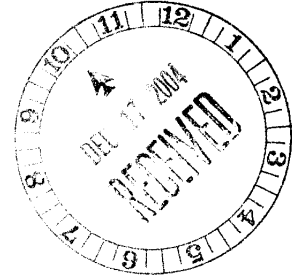
Robert T. Opal
General Commerce Counsel

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3072 fx. (402) 501-0132
rtopal@up.com

212784
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34417 (SUB- NO. 2)



UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION (MODIFICATION)--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

ENTERED
Office of Proceedings

Part of
Public Record

FILED
DEC 17 2004
SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072 (DIRECT)
(402) 501-0132 (FAX)

Dated: December 16, 2004
Filed: December 17, 2004

FILE RECEIVED
DEC 17 2004
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34417 (SUB-NO. 2)



**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION (MODIFICATION) --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for modification of the local, temporary trackage rights exempted in Finance Docket No. 34417. As modified, the trackage rights will apply over a line of railroad of The Burlington Northern and Santa Fe Railway Company between BNSF Milepost 113.0 and BNSF Milepost 117.0 near Endicott, Nebraska, a distance of 4.0 miles, and will expire on or about May 16, 2005.¹

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive

¹ Since the temporary trackage rights covered by this filing are "local" rather than "overhead" rights, the filing is not being made under the Board's new class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8). By decision served December 8, 2003 in Finance Docket No. 34417 (Sub-No. 1), the Board granted an exemption to permit the rights granted in Finance Docket No. 34417 to expire. At that time, it was anticipated that this would occur on or about October 15, 2004. However, this authority has not yet been exercised, and the trackage rights operations have continued by mutual agreement of BNSF and UP. UP is filing a new petition for partial revocation to permit the trackage rights, as modified herein, to expire on or about May 16, 2005.

applications in rail consolidations proceedings. The trackage rights covered by this notice are covered by the written agreement attached as Exhibit 2, and are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

§ 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the acquisition of temporary, local trackage rights by UP between BNSF Milepost 113.0 and BNSF Milepost 117.0 near Endicott, Nebraska, Texas, a distance of 4.0 miles.

§ 1180.6(a)(1)(I) Summary of the proposed transaction.

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(I) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicant is:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
Tel. (402) 544-3072
Fax (402) 501-0132

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on December 24, 2004.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of this transaction is to modify the temporary trackage rights exempted in Finance Docket No. 34417 in two respects: (i) the trackage rights will apply over 1.5 miles of additional trackage², and (ii) the trackage rights will expire on or about May 16, 2005. The modified rights are intended to allow UP to continue to serve a BNSF shipper which BNSF is unable to serve directly due to cessation of service on its own line as exempted in Docket AB-6 (Sub-No. 405X) while permanent arrangements for alternate rail service to this shipper are made, and to permit UP to handle trains carrying materials from the portion of the line which is being salvaged.

§ 1180.6(a)(5) States in which the Applicant Operates

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

² The original rights extended between BNSF milepost 114.5 and BNSF milepost 117.0. As modified, the rights will extend between BNSF milepost 113.0 and BNSF milepost 117.0.

A copy of the executed trackage rights agreement is attached as Exhibit 2.

§ 1180.4(g)(1)(I) Labor Protection

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

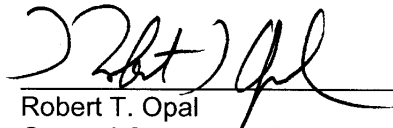
A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

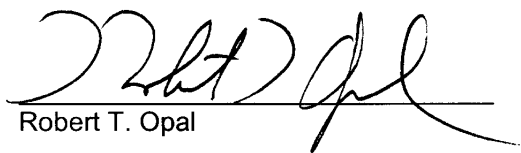
By: 

Robert T. Opal
General Commerce Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072 (DIRECT)
(402) 501-0132 (FAX)

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption in Finance Docket No. 34417 (Sub-No. 2), knows the facts stated therein, and that said facts are true as stated.

Dated: December 16, 2004.



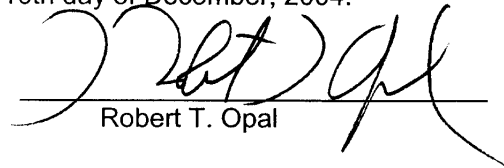
Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by first class United States mail:

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 16th day of December, 2004.


Robert T. Opal

**Temporary Trackage Rights Agreement
Endicott, NE MP 117.0 to MP 113.0**

THIS FIRST SUPPLEMENTAL AGREEMENT, made and entered into this 17th day of November, 2004 by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "User".

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between UP connections over BNSF's railroad system; and

WHEREAS, UP previously obtained temporary Trackage Rights upon certain lines of BNSF'S railroad, for the sole purpose of bridging its train service to Endicott Clay Products pursuant to the terms of that certain agreement dated August 10, 2004 between BNSF and UP ("Original Agreement"); and

WHEREAS, the parties desire to supplement said rights in order to allow UP to handle cars used for the salvage of abandoned track between BNSF MP 117.0 and BNSF MP 113.0.

WHEREAS, BNSF is agreeable to modification of the Original Agreement only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

I. Section 1 of the Original Agreement is hereby deleted and the following substituted in lieu thereof:

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

Attached hereto, marked Exhibit "A" dated 11/17/2004, and by this reference incorporated herein, is a print, which depicts the portion of line of BNSF railroad over which UP will be granted temporary Trackage Rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this agreement, attached hereto and by this reference incorporated herein).

II. Section 2 of the Original Agreement is hereby deleted and the following substituted in lieu thereof:

Section 2. GRANT OF TEMPORARY TRACKAGE RIGHTS.

The General Conditions covering the grant of temporary Trackage Rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this agreement shall arise, the provisions of this agreement shall prevail. Subject to the terms and conditions of Exhibit "B" this agreement, BNSF grants to UP the temporary nonexclusive right to use the Joint Trackage (as defined in Exhibit "B" of this agreement) that is in its account while

moving over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered BNSF for the purpose of this agreement. Said grant of rights shall be between BNSF MP 117.0 and BNSF MP 113.0 at Endicott, Nebraska.

It is understood and agreed that:

(a) UP shall not have the right to set out, pickup or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling of cars to and from Endicott Clay Products and the handling of cars used for the loading, salvage and scrap railroad material.

(b) to serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by UP; or

(c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to Trackage Rights trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement.

(d) UPRR locomotives shall have sufficient fuel for the entire movement on BNSF and UPRR will be responsible for the 1,000 mile inspection of their trains.

(e) temporary Trackage Rights period shall be limited to 180 days from the effective date of November 17, 2004, subject to any governmental approvals which may be required to implement the terms of this Agreement, and provided further conditioned upon UP's obtaining any such approvals, including without limitation, any advance governmental approvals (e.g., grant of petition to revoke) necessary to ensure termination as of the agreed date.

III.. Section 5 of the Original Agreement is hereby deleted and the following substituted in lieu thereof:

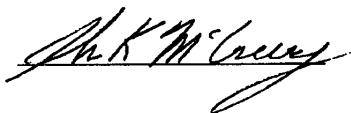
Section 5. LIMITATIONS AND MEASUREMENT OF TEMPORARY TRACKAGE RIGHTS TRAINS.

UP and BNSF agree that UP's use of the Trackage Rights granted herein shall be used only to facilitate the switching of Endicott Clay Products between BNSF MP 117.0 and BNSF MP 115.0 and the handling of cars used for the loading, salvage and scrap of railroad materials salvaged between BNSF MP 115.0 and BNSF MP 113.0.

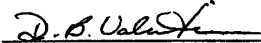
IV. This Supplement Agreement shall become effective November 17, 2004. All terms and conditions of the Original Agreement not heretofore amended nor amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

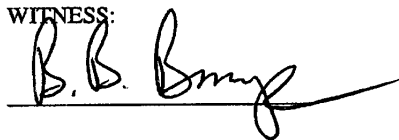
WITNESS:



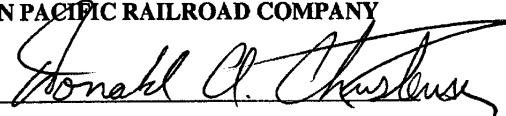
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: 

WITNESS:



UNION PACIFIC RAILROAD COMPANY

By: 

Date: 11/17/2004



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34417 (SUB-NO. 2)**

**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRackage RIGHTS EXEMPTION (MODIFICATION) --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern and Santa Fe Railway Company has agreed to grant local trackage rights to Union Pacific Railroad Company for a total distance of approximately 4.0 miles between BNSF Milepost 113.0 and BNSF Milepost 117.0 near Endicott, Nebraska. The rights are a modification of the temporary trackage rights exempted in Finance Docket No. 34417, and will expire on or about May 16, 2005.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:
By the Board,

Vernon A. Williams,
Secretary